

## STGWG Meeting Notes

Snowbird, Utah

November 12-14, 2008

### Tribal Executive Session (closed session)

Wednesday, November 12, 2008

**Jessica Abberly** - Santa Clara Pueblo; **Tom Bailor** - Confederated Tribes of the Umatilla Indian Reservation (CTUIR); **Brian Barry** - Yakama Nation; **Gabriel Bohnnee** - Nez Perce Tribe; **Peter Chestnut** - Pueblo de San Ildefonso; **Russell Jim** - Yakama Nation; **Titto Moses** - CTUIR; **Brooke Oleen** - NCSL; **Willie Preacher** - Shoshone-Bannock Tribes; and **Adrian Stevens** - The Seneca Nation of Indians - were present.

The primary agenda item was the appointment of a new STGWG Tribal Co-Convener. Co-Conveners co-chair bi-annual STGWG meetings, serve as the primary spokespeople of the group, are members of the STGWG Executive Committee, and also assist with a variety of other issues pertinent to STGWG.

Tom Bailor presented the group with a letter from Armand Minthorn that stated his decision to step down as Co-Convener of STGWG. Bailor informed the group that Mr. Minthorn had began his work as Co-Convener in 1997, volunteering for the position in 1997 at a meeting in Santa Fe, NM. Since that time, Minthorn has been fearless in advocating the message of advanced consultation with tribes and states to the Department of Energy (DOE). As a member of the CTUIR Board of Trustees and with obligations to his Tribe and community as a member and traditional religious leader, Mr. Minthorn felt that he could not devote enough attention to the needs of STGWG and the responsibilities of the Executive Committee.

Gabe Bohnnee and Willie Preacher were both mentioned and discussed as possible candidates for the position. Both men were humbled by the group's support and confidence in their abilities to lead. It was finally decided that whoever was appointed as Co-Convener, the other would be the Tribal Issues Committee Co-Chairman since we had two qualified candidates with broad technical backgrounds and interests in leading the groups. After much discussion, Bohnnee stated that the appointment should go to Preacher as he respects him as his elder. Preacher was appointed STGWG Co-Convener (and will assist Tom Winston, the current Co-Convener) and Bohnnee will be the new Co-Chair of the Tribal Issues Committee working with Peter Chestnut.

Another item of business:

Bailor mentioned the possibility of a meeting in DC with the DOE's Transportation External Coordination Working Group (TECWG) and STGWG if there was a possibility of not having the Tribal Summit again next year. Preacher stressed that we need to make sure tribes are engaged and express a strong interest in developing the agenda for the Summit.

There is a need to make sure that nuclear issues don't get rolled into tribal issues; tribes have their own issues to get out on the table.

### Continuation of Tribal Executive Session (open session)

Members mentioned above in closed session, along with:

**Richard Arnold** - TEC & Nevada Test Site; **Milton Bluehouse Jr.** - State of New Mexico; **Cathy Bohan** - DOE, West Valley, NY; **Linda Cohn** - Western Shoshone & National Nuclear Security Administration (NNSA); **Kristen Ellis** - DOE Office of Congressional & Intergovernmental Affairs (CI)I; **Doug Frost** - DOE-EM; **Rosmary Hill** - NNSA; **Leon Jones** - DOE, Idaho; **Julie Offner** - DOE, Office of Logistics Management; and **Bob Pence** - DOE, Idaho; **Brandt Petrasek** - DOE-EM; **Frank Schwartz** - Office of Nuclear Energy, Idaho - were present.

Following introductions, the two key topics that were discussed during the closed session were shared with DOE and those joining the meeting: 1) Continuation of DOE Tribal Summit and 2) Preacher's appointment as STGWG's new Co-Convener and Bohnce as Tribal Issues Committee Co-Chair.

Brandt Petrasek reported that STGWG's interest in having an annual Tribal Summit has been taken to the highest level within DOE since the discussion with Steve Morello (Deputy Assistant Secretary - Office of CI) at the meeting last May in Augusta, GA. STGWG and DOE were in agreement not to have one this year since many current DOE officials will not remain in their current positions once the transition to the new administration takes place. He hopes that one can be planned as early as possible once the Obama administration is in place.

Bailor: Requested a programmatic summit with break outs, including discussion on NW issues.

Petrasek updated the group on the progress of DOE Order 1230.2. He explained that DOE operates on a directives system, and the Directive mirrors the Framework. It is currently in internal review; the plan is to have the Order in place before new administration takes over.

Petrasek informed us that the online Indian training course for federal workers, "Working Effectively with Tribal Governments" has been up and running since January of this year. He mentioned the creation of additional modules for field personnel versus the modules for those at headquarters. The training will pertain to contractors, too.

Russell Jim: Hoped that this training can be transferred and used within the U.S. State Department, as they recognize Indian Nations as NGOs.

The remainder, and purpose, of the session was for DOE and Tribes to get reacquainted. Peter Chestnut noted that there are few places where Federal, State and Tribal folks have the

opportunity for such a forum like this, and that we should all take advantage of it and the relationships we can build in the coming days.

Comment: The challenge is getting the top executives within DOE to consult. Consultation early on makes for better decision-making which affects generations to come.

Jim: Long term management is hard to achieve.

Brian Barry: Long-term stewardship is at odds with what Yakama Nation sees as a goal, which is the technical basis for legacy management. We cannot put all the responsibility onto future generations. There has to be some that is shorter lived and can be disposed near surface. The technical basis of radioactivity needs to be revisited.

### **STGWG Executive Session**

Wednesday, November 12, 2008

PowerPoint Presentation on Fernald Natural Resource Damages Settlement - [LINK](#)  
**Tom Winston**, *State of Ohio*

The following is a list of STGWG's Transition Issues for the new administration that came out of this session:

#### **State and Tribal Government Working Group - Transition Issues**

- Transition continuity in the Office of Indian Affairs
- Tribal Summit
- Urgency of the Environmental Agenda
- Severity of the problems at Hanford - need to elevate and address
- Natural Resource Damage Assessment - funding and process
- Budget that is compliant with all laws, treaties and orders
- Relationship of DOE with tribes and states - recognizing the authority of tribal and state governments
- Need for consultation on all issues *before* decisions are made
- Consistent conformance with DOE's Indian Policy
- Need for lessons learned programs to add value

- Performance-based accountability for DOE managers/staff
- Are all of DOE's accomplishments real?
- Need to know the end point, what happens at the end of cleanup
- Desire to maintain current level of engagement with DOE on all transportation funding

## **STGWG Tribal Session with U.S. DOE**

### **PowerPoint Presentation on GNEP PEIS - [LINK](#)**

Frank Schwartz, *GNEP PEIS Document Manager, U.S.-DOE Office of NE*

### **PowerPoint Presentation on Greater than Class C Waste - [LINK](#)**

Christine Gelles, *Director, U.S.-DOE Office of Disposal Operations*

- **General Update on RW Program and TEC**

Julie Offner, *Transportation Institutional Specialist, U.S.-DOE Office of Logistics Mgmt.*

Offner reviewed some of the Office of Civilian Radioactive Waste Management's (OCRWM) activities since our last STGWG meeting.

1. OCRWM submitted an application to the Nuclear Regulatory Commission seeking authorization to construct the Nation's first geologic repository on June 3, 2008. It consisted of 8,646 pages and culminates more than 25 years of scientific research and engineering.

On September 8, 2008, the NRC docketed the license application and began its review. The Nuclear Waste Policy Act gives NRC three years with an additional option year to conduct extensive technical reviews and legal hearings are open to the public.

2. OCRWM published a revised proposed policy in the Federal Register implementing Section 180(c) on October 31, 2008. The grant program would cover emergency planning, training and assistance along transportation routes in addition to safe, routine transportation. Letters about the notice were sent to tribal leaders on November 5. This updates the July 2007 proposed policy by providing the funding allocation approach for tribes and some clarification regarding the earlier proposal. Tribes would also receive direct funding from DOE.

DOE will issue a comment-response document in 2009 summarizing and responding to both this FRN and July 2007's. These comments will inform the development of a planned pilot program to test the Section 180(c) Policy and its implementation. After the pilot, DOE will issue another revised proposed policy in

2014 with the final policy being issued in 2015 or five years before the expected start of waste shipments in 2020 (the best achievable date).

3. OCRWM plans "to develop and begin implementation of a comprehensive transportation plan that accommodates state, local and tribal concerns and input to the greatest extent practicable" by the end of 2008. Elements of the plan will include: requirements, infrastructure development, stakeholder involvement and logistical/operational planning. They will solicit comments from stakeholders and the public.
4. DOE plans to hold the next TEC meeting in Charlotte, NC - April 14-16, 2008. The Tribal Caucus will be held on April 14. During this transitional period and the next several years, TEC will focus on information exchange and panel discussions. The topic groups will no longer meet, but many of the issues now covered by these groups will be discussed in plenary sessions.
5. On October 10, 2008, OCRWM issued a Record of Decision (ROD) to ship nuclear waste along a rail road line it proposed to build from Caliente to the Yucca Mountain repository. DOE also decided to allow shipment of general freight on the rail line (shared use option). Published in the register, the ROD outlined specific paths for the rail line through Caliente, Garden Valley, Oasis Valley and near Goldfield. The Surface Transportation Board is to hold a hearing on December 4 on the certificate for shared use.

Petrasek briefly commented on the STGWG letter sent to Secretary Bodman regarding staffing within the Office of CI and the hope for a Tribal Summit to take place early next year. Petrasek reported that a response letter from DOE was included in our meeting packets. Links to the letters can be found below.

**STGWG Letter to Secretary Bodman - [LINK](#)**

**DOE Response Letter to STGWG - [LINK](#)**

### **STGWG Open Session with U.S. DOE**

**Friday, November 14, 2008**

**Jessica Abberly; Tom Bailor; Brian Barry; Cathy Bohan; Gabe Bohnee; Denise Brooks - State of Texas; Peter Chestnut; Larry Erickson - State of Missouri; Brian Hembacher - NAAG; Russell Jim; Leon Jones; Titto Moses; Roger Mulder - State of Texas; Ken Niles - State of Oregon; Julie Offner; Brooke Oleen; John Owsley - State of Tennessee; Brandt Petrasek - DOE-EM; Melissa Savage - NCSL; Tom Schneider - State of Ohio; John Stanfill - Nez Perce Tribe; Adrian Stevens; Tom Winston - State of Ohio - were present.**

- **Teleconference call with Steven Miller, Attorney, DOE's General Counsel**

The purpose was to discuss questions 10 and 11 of the "15 Questions" from DOE's Natural Resource Damages Guidance for EM Field Sites.

**Question 10, DOE's Dual Role as Responsible Party and Natural Resource Trustee:**

What are DOE's responsibilities as a natural-resource trustee at sites where it is also a responsible party?

**Question 11, DOE Funding:** To what extent and under what conditions may EM sites fund the trust related activities of its co-trustees?

Steven Miller: In the 1990's, there was more of a focus on expedited cleanup. Compliance agreement milestones were driving the legal agenda. In the last few years, however, DOE has taken a more proactive stance. We've advocated being proactive, but have had to be reactive at times.

Generally speaking we have been working on this very carefully. We do have a responsibility for minimizing unnecessary expenditures - it starts with the sites to identify. We also have to ensure that the work is fiscally sound.

We have and we will make good on damages as authorized by law. DOE would not pay more damages than it needs to. It seeks input from stakeholders and elected representatives.

Brian Hembacher: There should be cooperative decision making following the model by the National Oceanic and Atmospheric Administration - not just stakeholders, but trustees. (Talked about the white paper developed, but not widely distributed - **American Bar Association's NRD Litigation Tool Box: How to Avoid Getting Hammered - "A Trustee's Perspective: The Measure of Damages and How to Put a Value on an Injured Natural Resource"** - [LINK](#)). There needs to be dedicated staff within the Department involved in cooperative decision-making - this is not considered so at all sites. You have to have people at sites whose sole responsibility is NRD. Until there are dedicated people, the issue won't be taken seriously.

Winston: Integrating NRD in to the decision-making process is a much more efficient approach. Also, the visibility of funding for NRD within the budget should be more closely examined - commitments are made and should fit into some other profile.

There are many policy issues waiting to be addressed and Matt Duchesne is pulled in a lot of directions. DOE should address them as DOJ is not always responsive (as with Fernald).

Brian Barry asked whether DOE's General Counsel is able to advocate for funding for trustees to do NRIA. There is an opportunity to integrate it into response actions, but trustees need funds. Is this something that you can advocate for?

Miller: It's a programmatic call. We can certainly do that or play that role.

- Other Business

Tom Winston indicated that Washington, DC would be the ideal location for the next spring STGWG meeting and that new DOE personnel will be more available and likely to attend.

Winston went over the list of bullet points that the group developed as STGWG's transition message to the new administration during the Executive Session on Wednesday, November 12.

All members were in agreement and would like to send a letter from STGWG to the new administration highlighting key transition issues and the importance of government to government relationships. Tom W., Willie and Brooke will work to get letter done along with David Swindle, as he works closely with the transition team.

Jessica Abberly explained that to strengthen our message of government to government consultation we use language directly from the Policy and Framework as a basis and provide examples in support.

Winston agreed, but mentioned that the timing of key transition items would be critical and we need to determine when the audience would be most receptive. He noted that when STGWG meets with the new Secretary of Energy in DC, we will talk lessons learned. We can save some transitional bullet points for later.

Jim requested we emphasize compliance with the Indian Policy, as it has taken awhile to get this idea "in there".

- Committee Reports

Integration & Disposition: Waste Management issues were covered in meeting sessions. Committee will need to appoint two new Co-Chairs, as Bohnee is now Tribal Issues Co-Chair and Mike Wilson has retired.

Tribal Issues: Peter Chestnut reported that the primary line of business was Co-Convener - Preacher was appointed during Tribal Executive Session. The group's messages to DOE are included on the STGWG transition issues list, also hope to maintain strong funding for tribal programs.

Transportation: Ken Niles noted that Frank Marcinowski mentioned DOE's fuel transfer between Savannah River Site and Idaho National Laboratory (INL) - would be a significant change if it doesn't happen.

Mentioned continued shipments to INL from universities.

WIPP shipments: One shipment a week to INL. Hanford will not ship to WIPP for the next five years.

Both DOE-EM and OCRWM are to greatly reduce their interaction with state regional groups due to budget cuts.

Julie Offner reported that we are many years out from shipping radioactive waste to Yucca Mountain. Because of cuts to budget, her Office is exploring new ways to convene the Transportation External Communication (TEC) Working Group and the state regional groups on these issues. Webinars (meetings via the internet) are ways to effectively communicate ideas, and these would not require funding/travel for two meetings a year. However, TEC is planning on meeting in mid-April in Charlotte, NC. There will no longer be topic groups - hope is to form an advisory group. Her Office is exploring other ideas, such as more of a one way plenary session versus breakout groups. DOE will continue to hold the Tribal Caucus prior to TEC meetings.

Niles: The loss of topic groups will not be well received, as they provided interactive dialogue and product. EM seems to think that their current transportation plan is fine; however, interim storage could happen sooner rather than later.

Chestnut mentioned Remote Handled TRU as a topic for our next meeting, and to take full advantage of storage space.

Natural Resource Injury Assessment/Long-Term Stewardship: John Owsley and Neil Weber continue to look to STGWG on direction for these issues.

Clarify that funding is for trustee efforts as well as NRIA.

American Bar Association's white paper to be dispersed to group (see link above - under STGWG Open Session with U.S. DOE / teleconference with Steven Miller).

At the spring meeting, there is a desire to have a session on treaties; each tribe could talk to treaty and their experience with it (has a tie to LTS). Tribes are to provide Brooke (NCSL) with copies of treaties.

Additional bullet points:

- Desire to maintain current level of engagement with DOE on transportation planning; signs from DOE are not good with reduced interaction with state regional groups and dropping TEC's Topic Groups.
- **Yakama Nation's pamphlet** - [LINK](#) on cultural resources to be scanned and put on web. Hope to include other Tribes' information.
- Representative John McCoy from the state of Washington sponsored a bill (**SHB 1495**) - [LINK](#) that became law and effective July 24, 2005. It encourages tribal history to be included in the common school curriculum. There has been pressure to broaden the law; this topic might be of interest to explore during the treaty presentations at our next STGWG meeting.
- Thank you letters for service to STGWG will be sent to Armand Minthorn and Mike Wilson.



- Chestnut recommended the book, America's Nuclear Wasteland: Politics, Accountability and Cleanup, written by Max Power - a former STGWG member.